

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 02-0320**  
**Controlled Substance Excise Tax**  
**For the Period: April 23, 2002**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**Controlled Substance Excise Tax—Assessment; Liability**

**Authority:** IC 6-8.1-5-1(b); IC 6-7-3-5; IC 6-7-3-6(b)(2); IC 6-7-3-10(b);  
IC 6-7-3-11; IC 6-7-3-13;  
Bryant v. State of Indiana, 660 N.E.2d 290, (Ind. 1995);  
Indiana Dept. of Revenue v. Adams, 728 N.E.2d 728 (Ind. 2002);  
Hall v. Indiana Dept. of Revenue, 660 N.E.2d 319 (Ind. 1995).

Taxpayer protests the assessment of CSET on possession of marijuana.

**STATEMENT OF FACTS**

Taxpayer was charged in County Circuit Court with:

- (1) Dealing in marijuana, Class C Felony
- (2) Possession of marijuana, Class D Felony
- (3) Maintaining a common nuisance, Class D Felony.

A motion to suppress evidence was filed and was granted. Taxpayer pleaded guilty to: (3) Maintaining a common nuisance. The charges pertaining to the dealing in and possession of marijuana were dismissed. A detective for the County Drug Task Force received a letter from the County Prosecutor's office requesting that a Controlled Substance Excise Tax assessment be prepared on the 1,054.32 grams of marijuana seized from Taxpayer's residence. The Criminal Investigation Division of the Indiana Department of Revenue received the detective's Letter of Request for Assessment. The Department prepared an Activity Report and specifically noted that Taxpayer plead guilty to an unrelated charge to the dealing in and possession of marijuana. Taxpayer filed a protest to the assessment and a hearing was held. This letter of findings is the result.

**DISCUSSION**

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). In Indiana, the manufacture, possession, or delivery of marijuana is taxable. IC 6-7-3-5 imposes the Controlled Substance Excise Tax on controlled substances that are delivered, possessed, or manufactured in Indiana in violation of IC 35-48-4, **Offenses Relating to Controlled Substances**, or 21 U.S.C. 841 through 21 U.S.C. 852, (Federal Controlled Substances Act) **Offenses and Penalties**. The tax does not apply to a controlled substance that is distributed, manufactured, or dispensed by a person registered under IC 35-48-3. Under the CSET provisions, a taxpayer who delivers, possesses, or manufactures marijuana is

required to pay \$3.50 for each gram. IC 6-7-3-6(b)(2). A receipt for payment of CSET is valid for 30 days. IC 6-7-3-10(b). A person may not deliver, possess, or manufacture a controlled substance subject to CSET without having paid the tax. IC 6-7-3-11. A person who fails or refuses to pay CSET is subject to a penalty of 100% of the tax in addition to the tax. *Id.* An assessment for CSET due is considered a jeopardy assessment; the department is required under Indiana statute to demand immediate payment and is required to take action to collect the tax due. IC 6-7-3-13.

The Indiana Supreme Court has stated that the assessment of CSET is a punishment and, therefore, a jeopardy within the double jeopardy clause. Bryant v. State of Indiana, 660 N.E.2d 290, 297 (Ind. 1995). It is the second jeopardy that is constitutionally barred. Jeopardy in the imposition of CSET attaches when the Department serves a person with an assessment notice and demand. *Id.* at 299. The Indiana Supreme Court has stated that the exclusion and suppression of evidence in a criminal proceeding does not apply in the Department proceeding to assess CSET. *See Indiana Dept. of Revenue v. Adams*, 728 N.E.2d 728 (Ind. 2002).

At the tax protest hearing before the Department, Taxpayer stated that she lived with Husband and he smoked marijuana. Taxpayer stated that she was aware that Husband smoked marijuana and that he had a history of smoking marijuana. A person whom Husband had met came to the house in which Taxpayer and Husband lived to get some marijuana. Taxpayer stated to the Department at the hearing—the marijuana was sitting on a counter in the house. According to Taxpayer, the person was a police informant. Taxpayer was arrested and charged. Husband was later charged and he pleaded guilty to possession of marijuana.

In Hall v. Indiana Dept. of Revenue, 660 N.E.2d 319 (Ind. 1995), police entered and searched the home of a husband and wife. During their inspection of the property, the police discovered marijuana. The husband and wife were arrested and charged with possession of marijuana. Four days later the Department assessed CSET. The State dismissed the criminal charges against the wife. The husband pleaded guilty to possession of marijuana. The husband and wife protested the CSET assessment; the Department denied the protest. The husband and wife appealed to the Indiana Tax Court. The Tax Court concluded that the CSET assessment against the husband was a second jeopardy, but that the rights of the wife had not been violated. The case was appealed to the Indiana Supreme Court; it held that the wife was liable for the CSET assessment.

The CSET assessment—based on Taxpayer's taxable possession of marijuana—is Taxpayer's only jeopardy. Taxpayer has not been subjected to prosecution or punishment for the criminal charges related to the dealing in or the possession of marijuana. Taxpayer did plead guilty to maintaining a common nuisance, but the CSET report states that the common nuisance charge is unrelated to dealing and possession. Because the dealing and possession charges were dismissed against Taxpayer, no jeopardy attached. Taxpayer is liable for the CSET assessment.

### **FINDING**

Taxpayer's protest is denied